

I. Groups I & II Are Linked

Despite the Examiner's assertions, the Examiner has mischaracterized Group I & Group II technical features.¹ The Applicants argue that the Examiner erroneously found each of the claims in Group I & II to contain a technical feature that allegedly lacks novelty (*i.e.*, a prothrombin or prothrombin-related protein). The Applicants point out that the Examiner has not viewed the claims as a whole and submit that at least one common novel technical feature shared by Groups I & II may be represented by a "transgenic organism comprising a prothrombin or prothrombin-related polypeptide". On this basis, Group I & Group II do have unity of invention because they recite a shared or corresponding technical feature having a contribution over the prior art.

Further, an Examiner must show, absent a restriction, that there is an undue search burden. "... a serious burden on the examiner may be *prima facie* shown if the examiner shows by **appropriate explanation** either separate classification, separate status in the art, or a different field of search ..." *MPEP* § 803 ¶ 5 [emphasis added]. This standard is not met in regards to the difference between Group I and II because the Examiner has not provided any "appropriate explanation" for separate classifications. *MPEP* § 803 ¶2 ("Examiners must provide reasons and/or examples to support conclusions ... to support the requirement ..."). The Examiner has only made conclusory statements and has not EXPLAINED WHY these standards are applicable to the present claims. The Applicants, therefore, rebut that there is no *prima facia* showing of an undue search burden.

Due to the extensive interrelationships between Group I and Group II, the Examiner will inevitably find information about each following a complete search of either. Therefore, the Examiner has not demonstrated that Groups I and II are in "... a different field of search." *MPEP* § 808.02. Groups I and II share a common element (*supra*) and the Examiner will be searching for this feature - regardless of whether applicant chooses Group II or Group I. Therefore, there will be no additional burden on the Examiner (a consideration which the MPEP indicates is dispositive).

¹ Group I is not limited to a special technical feature of a non-human transgenic organism. Group II is not limited to a special technical feature of a polypeptide and composition comprising a polypeptide. *Office Action*, pg. 4.

The Applicants' therefore respectfully request the Examiner merge Group I and II. If the Examiner chooses to do so, the Applicants will accept this as the election.

II. The Species Restriction

The Examiner states that "Claims 22 and 24 recited the following species: promoters of whey acidic protein genes, casein genes, lactalbumin genes and beta lactoglobulin genes." *Office Action, pg. 4.* The Applicants disagree with the Examiner's assertion that a properly constructed Markush Group defining a claim element may be subject to a species restriction. Only because required to, the Applicants elect whey acidic protein genes.

III. Default Election

The Applicants provide an election of the Examiners' offered groups only because required to do so under 35 U.S.C. § 121. If the Examiner decides not to reconsider the groupings, the Applicants choose Group II.

Dated: November 12, 2004



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